

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-2902

United States of America,

Appellee,

v.

David J. Pelowski,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: January 15, 2003

Filed: January 21, 2003

Before BYE, FAGG, and RILEY, Circuit Judges.

PER CURIAM.

David Pelowski pled guilty to distributing 50 grams or more of a mixture containing methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(viii). At sentencing, the district court¹ applied the Guidelines career-offender provision; denied Pelowski's motion for a downward departure, which had been based upon overrepresentation of his criminal history and also upon the circumstances of one of the convictions underlying his career-offender status; and sentenced Pelowski to 188 months imprisonment and 5 years supervised release.

¹The Honorable Lyle E. Strom, United States District Judge for the District of Nebraska.

Pelowski appeals, arguing the district court mistakenly believed it lacked authority to depart downward based on the circumstances of his career-offender status as distinct from the overrepresentation of his general criminal history.

Having carefully reviewed the record, we find no indication the district court believed it lacked authority to depart downward on either basis. Consequently, Pelowski's appeal argument is unreviewable. See United States v. Correa, 167 F.3d 414, 417 (8th Cir. 1999).

Accordingly, the judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.